**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

56249-172 (PHLL-155RE)

First named inventor: **Mark Dinsmore**Application No.: **10/790,635**

Art Unit:

Filed: **March 1, 2004**

Examiner:

Title: **OPTICALLY DRIVEN THERAPEUTIC RADIATION SOURCE**

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (703) 872-9306

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☐ Small entity-fee \$ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☒ Other than small entity - fee \$ **1,500** (37 CFR 1.17(m))

Please charge this fee to our Deposit Account 50-1133 and any other fees due

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in

the form of Response to Notice of Incomplete (identify type of reply):

Reply to the Notice to File Missing Parts of Application

☐ has been filed previously on _____.

☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____.

☐ has been paid previously on _____.

☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

3. Terminal disclaimer with disclaimer fee

- ☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

Mark G. Lappin
Signature

5/20/05
Date

Mark G. Lappin

Typed or printed name

26,618

Registration Number, if applicable

McDermott Will & Emery LLP

Address

617-535-4043

Telephone Number

28 State Street
Boston, MA 02109

Address

Enclosures: ☒ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay

☐ Other: _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☒ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (703) 872-9306.

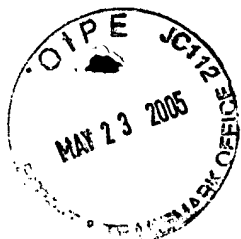
May 20, 2005

Date

Gayle Endres
Signature

Gayle Endres

Typed or printed name of person signing certificate



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Mark Dinsmore

Serial No.: 10/790,635
(which is a reissue of 6,480,568, issued November 12, 2002)

Filed: March 1, 2004

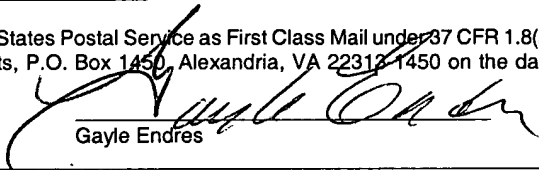
Title: OPTICALLY DRIVEN THERAPEUTIC RADIATION SOURCE

Attorney Ref.: 56249-172 (PHLL-155RE)

CERTIFICATE OF MAILING (37 C.F.R. § 1.8(a))

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail under 37 CFR 1.8(a) in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22312-1450 on the date indicated below.

Date: 5/20/05


Gayle Endres

Mail Stop Petition
Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

TRANSMITTAL LETTER

Enclosed herewith for filing in the above-identified patent application please find the following:

1. Copy of Notice of Abandonment mailed by USPTO on March 22, 2005;
2. Applicant's Reply to the Notice of Abandonment from USPTO;
3. Petition For Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. 1.137(b);
4. Copy of Notice of Incomplete Reply (Reissue) mailed by USPTO on March 24, 2005;
5. Properly executed Assent of Assignee To Reissue;
6. Properly executed Statement Under 37 CFR 3.73(b); 2004
7. Revised Petition Under 37 CFR §1.47(b); and
8. Revised Declaration of Mark G. Lappin Filed in Support of Petition Under 37 CFR §1.47(b).

10/790,635

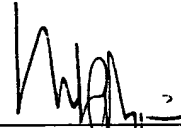
May 20, 2005

Page - 2 -

In connection with the foregoing matter, the Commissioner is authorized to charge any fees which may be due, or credit any overpayment, to Deposit Account Number 50-1133.

Respectfully submitted,

Dated: 5/20/05



Mark G. Lappin
Registration Number 26,618
McDermott Will & Emery LLP
28 State Street
Boston, MA 02109-1775
Tel.: (617) 535-4043
Fax: (617) 535-3800



UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED
MAR 24 2005

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

PHLL-155RE
56249-172

MAY 23 2005

MW8E

MCDERMOTT WILL & EMERY, LLP
ATTN: INTELLECTUAL PROPERTY DEPARTMENT DOCKETING
28 STATE STREET
BOSTON MA 02109

DOCKETED

PCM

4/22/05 Reply to Mtr.
of Abandonment
(Final 5/22/05)

COPY MAILED

MAR 22 2005

OFFICE OF PETITIONS

In re Application of
Mark Dinsmore
Application No. 10/790,635
Filed: March 1, 2004
Attorney Docket No. 56249 (PHLL-155RE)

: ON PETITION
: AND
: NOTICE OF ABANDONMENT
:

This is in response to the petition under 37 CFR 1.47(b), filed November 8, 2004 (certificate of mailing dated November 4, 2004).

A review of the file reveals that on May 4, 2004, the United States Patent and Trademark Office (Office) mailed a Notice to File Missing Parts of Reissue Application to petitioner, which set forth a two-month period to submit the required payment of a \$130.00 surcharge, an executed oath or declaration in compliance with 37 CFR 1.63, a statement of consent bearing the signature of an official authorized to act on behalf of the assignee, and a signed assignee's statement under 37 CFR 3.73(b). Extensions of time to reply to the Notice were permissible.

On November 8, 2004 (certificate of mailing dated November 4, 2004), petitioner filed an extension of time to reply within the fourth month, a petition under 37 CFR 1.47(b), a declaration, and paid the requisite fees. However, the Office did not receive a statement of consent bearing the signature of an official authorized to act on behalf of the assignee or a signed assignee's statement under 37 CFR 3.73(b) as required by the Notice of May 4, 2004.

Because petitioner failed to submit a timely and proper response to the Notice of May 4, 2004, within the time period stated, this application is currently abandoned as of November 5, 2004.

Under the circumstances of this application, petitioner must file a petition to revive under 37 CFR 1.137 and pay the proper petition fee within **TWO (2) MONTHS** of this decision before the petition under 37 CFR 1.47(b) may be addressed on its merits. No extensions of time are permissible. Accordingly, the petition is dismissed without prejudice. Unless petitioner can demonstrate that petitioner was "unavoidably" prevented from submitting a proper reply to the Notice, a petition under 37 CFR 1.137(b) is suggested. The petition under 37 CFR 1.47(b) will remain in the file until such time as petitioner has filed a grantable petition to revive under 37 CFR 1.137.

The Office reminds petitioner that a grantable petition under 37 CFR 1.47(b) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration; (2) an acceptable oath or declaration; (3) the petition fee; (4) a statement of the last known address of the non-signing inventor; (5) proof of proprietary interest; and, (6) proof of irreparable damage. Petitioner is further reminded of Section 409.03(b)(A) of the Manual for Patent Examining Procedure, which states in pertinent part:

Where a corporation is the 37 CFR 1.47(b) applicant, an officer (President, Vice-President, Secretary, Treasurer or Chief Executive Officer) thereof should normally sign the necessary oath or declaration. A corporation may authorize any person, including an attorney or agent registered to practice before the Patent and Trademark Office, to sign the application oath or declaration on its behalf. Where an oath or declaration is signed by a registered attorney or agent on behalf of a corporation, either proof of the attorney's or agent's authority in the form of a statement signed by an appropriate corporate officer must be submitted, or the attorney or agent may simply state that he or she is authorized to sign on behalf of the corporation. Where the oath or declaration is being signed on behalf of an assignee, see MPEP Section 324. An inventor may not authorize another individual to act as his or her agent to sign the application oath or declaration on his or her behalf. *Staeger v. Commissioner*, 189 USPQ 272 (D.D.C. 1976), *In re Striker*, 182 USPQ 507 (Comm'r Pat. 1973). Where an application is executed by one other than the inventor, the declaration required by 37 CFR 1.63 must state the full name, residence, post office address, and citizenship of the nonsigning inventor. Also, the title or position of the person signing must be stated if signing on behalf of a corporation under 37 CFR 1.47(b).

Petitioner may supplement the petition under 37 CFR 1.47(b) as desired.

Further correspondence with respect to this matter should be addressed as follows and to the attention of Senior Petitions Attorney Christina Tartera Donnell:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Attn: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Mark Dinsmore

Serial No.: 10/790,635
(which is a reissue of 6,480,568, issued November 12, 2002)

Filed: March 1, 2004

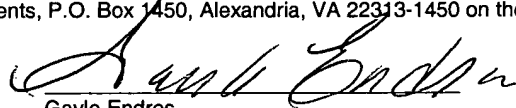
Title: OPTICALLY DRIVEN THERAPEUTIC RADIATION SOURCE

Attorney Ref.: 5 6249-172 (PHLL-155RE)

CERTIFICATE OF MAILING (37 C.F.R. § 1.8(a))

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail under 37 CFR 1.8(a) in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

Date: 5/20/05


Gayle Endres

Mail Stop Petition
Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

REPLY TO NOTICE OF ABANDONMENT

Sir:

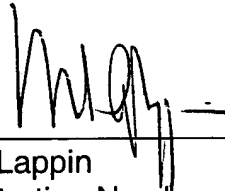
This paper is in response to the "On Petition and Notice of Abandonment" (copy enclosed) dated March 22, 2005, in the above-identified reissue application.

The Notice of Abandonment states that Applicant's reply (mailed 11/04/2004) to the Notice of Missing Parts mailed 05/04/2004 contained two documents (Statement of Consent and Assent of Assignee) that did not bear the signature of an authorized official, and therefore the above-referenced application currently stands abandoned as of November 5, 2004. The Notice of Abandonment further states that Applicant must file a petition to revive under 37 CFR 1.137(b) and fee, before Applicant's petition under 1.47(b) can be addressed on its merits, and that Applicant's petition under 1.47(b) will remain in the file until such time as petitioner has filed a grantable petition to revive under 37 CFR 1.137.

In response, Applicant hereby submits a Petition to Revive under 37 CFR 1.137(b). Applicant further submits a Statement of Consent and Assent of Assignee, properly executed by authorized officials.

Finally, Applicant submits a revised Petition under 1.47(b), and a revised Declaration under 1.47(b). The revisions were made in order to better clarify the circumstances under which the non-signing inventor refused to sign the oath and declaration.

Respectfully submitted,



Mark Lappin
Registration Number
McDERMOTT WILL & EMERY LLP
28 State Street
Boston, Massachusetts 02109
Tel. (617) 535-4043
Fax: (617) 535-3800

Date: May 20, 2005

COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/790,635	03/01/2004	Mark Dinsmore	56249 (PHLL-155RE)

23630
 MCDERMOTT WILL & EMERY LLP
 ATTN: INTELLECTUAL PROPERTY DEPARTMENT DOCKETING
 28 STATE STREET
 BOSTON, MA 02109

CONFIRMATION NO. 6536
 FORMALITIES LETTER
 OC000000015551280
 OC000000015551280

Date Mailed: 03/24/2005

NOTICE OF INCOMPLETE REPLY (REISSUE)***Filing Date Granted***

The U.S. Patent and Trademark Office has received your reply on 11/08/2004 to the Notice to File Missing Parts (Notice) mailed 05/04/2004 and it has been entered into the reissue application. The reply, however, does not include the following items required in the Notice.

The period of reply remains as set forth in the Notice. You may, however, obtain EXTENSIONS OF TIME under the provisions of 37 CFR 1.136 (a) accompanied by the appropriate fee (37 CFR 1.17(a)).

A complete reply must be timely filed to prevent ABANDONMENT of the above-identified application.

The required items noted below SHOULD be filed along with any items required above. The filing date of this reissue application will be the date of receipt of the items required above.

- Consent of the assignee is present, but is unsigned. A statement of consent bearing the signature of an official authorized to act on behalf of the assignee(s) must be provided, to comply with 37 CFR 1.172.
- Assignee's statement under 37 CFR 3.73(b) is present, but is unsigned. A 37 CFR 3.73(b) statement bearing the signature of an official authorized to act on behalf of the assignee must be provided.

Replies should be mailed to: Mail Stop Missing Parts
 Commissioner for Patents
 P.O. Box 1450
 Alexandria VA 22313-1450

*A copy of this notice **MUST** be returned with the reply.*

Customer Service Center
 Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Mark Dinsmore

Serial No.: 10/790,635
(which is a reissue application of U.S. Patent No. 6,480,568,
issued November 12, 2002)

Filed: March 1, 2004

Title: OPTICALLY DRIVEN THERAPEUTIC RADIATION SOURCE

Attorney Ref.: 56249-172 (PHLL-155RE)

CERTIFICATE OF MAILING (37 C.F.R. § 1.8(a))

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail under 37 CFR 1.8(a) in an envelope addressed to Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

Date: 5/20/05

Gayle Endres
Gayle Endres

Mail Stop Missing Parts
Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

ASSENT OF ASSIGNEE TO REISSUE

Sir:

The undersigned **Carl Zeiss AG**, with a post address **Carl Zeiss ~~Strasse~~ 22, 73447 Oberkochen, Germany**, assignee of the entire interest in the above-mentioned Letters Patent, hereby assents to the accompanying reissue patent application. Attached is a "Statement Under 37 CFR 3.73(b)," establishing the right of the assignee, **Carl Zeiss AG**, doing business as **Carl Zeiss AG**, to take action in this reissue application. The undersigned is empowered to sign this certificate on behalf of the assignee.

Respectfully submitted,

CARL ZEISS AG

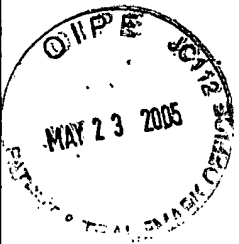
Date: May 18, 2005

By: i.V. Nikolai Gauss, i.V.

Printed Name: Dr. Nikolai Gauss

Title: Patent Manager

Strasse
Carsten Henckel
Patent Manager



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Mark Dinsmore

Serial No.: 10/790,635
(which is a reissue application of U.S. Patent No. 6,480,568,
issued November 12, 2002)

Filed: March 1, 2004

Title: OPTICALLY DRIVEN THERAPEUTIC RADIATION SOURCE

Attorney Ref.: 56249-173 (PHLL-157RE)

CERTIFICATE OF MAILING (37 C.F.R. § 1.8(a))

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Date: 5/20/05

Gayle London

Mail Stop Missing Parts
Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

STATEMENT UNDER 37 CFR 3.73(b)

Carl Zeiss AG

(Name of Assignee)

(Type of Assignee)

certifies that it is the assignee of the entire right, title and interest in the patent application identified above by virtue of:

- A. ☒ An assignment from the inventor(s) of the patent application identified above. The assignment was recorded in the Patent and Trademark Office at Reel 012640, Frame 0834 for which a copy thereof is attached.
- B. ☒ A chain of title (Asset Purchase Agreement) from the inventor(s), of the patent application identified above, to the assignee as shown below:

From: Photoelectron Corporation

To: Carl-Zeiss-Stiftung, doing
business as Carl Zeiss

The document was recorded in the Patent and Trademark Office at

Reel 014981 Frame 0591, for which a copy thereof is attached.



AND

- C. [X] A chain of title document (in German) setting forth the change of name/form of the assignee from "Carl-Zeiss-Stiftung, doing business as Carl Zeiss", to "Carl Zeiss AG", a copy of which is attached. This document was submitted for recordal with the U.S. Patent and Trademark Office on March 28, 2005, however notice of Reel and Frame numbers from the USPTO has not yet been received.

The undersigned has reviewed all the documents in the chain of title of the patent application identified above and, to the best of undersigned's knowledge and belief, title is in the assignee identified above.

The undersigned (whose title is supplied below) is empowered to sign this certificate on behalf of the assignee.

I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: May 18, 2005

Name: Dr. Nikolai Gauss

Title: Patent Manager

Telephone Number: +49 (0) 7364 202841

Signature: V. Nikolai Gauss

Carsten Henckell

Patent Manager

+49 (0) 7364 203602

V. Carsten Henckell



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Mark Dinsmore

Serial No.: 10/790,635 (which is a reissue application of
6,480,568 issued November 12, 2002)

Filed: March 01, 2004

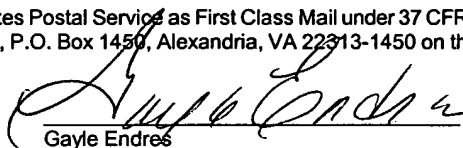
Title: OPTICALLY DRIVEN THERAPEUTIC RADIATION SOURCE

Attorney Ref.: 56249-172 (PHLL-155RE)

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Date: 5/20/05


Gayle Endres

Office of Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REVISED PETITION UNDER 37 CFR § 1.47(b)

Dear Sir:

In response to the Notice of Missing Parts of Reissue Application dated May 4, 2004, petition is hereby made to accept the Declaration and Power of Attorney, which is enclosed herewith and is signed by Mark G. Lappin on behalf of and as an agent of the sole inventor of the above-identified reissue application, pursuant to the provisions of 37 C.F.R. § 1.47(b). The Notice To File Missing Parts of Reissue Application has a two (2) month shortened statutory period for response expiring July 4, 2004. A Petition for a Four Month Extension of Time to Respond to the Notification of Missing Parts was already filed on November 4, 2004 with the Petition of same date. However, if the Office of Petitions deems it necessary to file a Petition for Extension of Time with this

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200.00 DA

filing, please charge the requisite fee to our Deposit Account No. 50-1133.

A. SOLE INVENTOR

Mark Dinsmore is the sole inventor of the above-identified application ("Application"). At the time Mark Dinsmore invented the subject matter of the Application ("Invention"), he was an employee of Photoelectron Corporation ("Photoelectron").

B. APPLICANT MAKES OATH

In accordance with M.P.E.P. §409.03(b), the undersigned, Mark G. Lappin, hereby makes application for the Invention on behalf of and as agent for an inventor who refuses to sign the Declaration and Power of Attorney for the Application ("Application Papers"). Mark G. Lappin hereby states that he is authorized to sign on behalf of Carl Zeiss AG, the current assignee of the Application, in this matter for this purpose.

C. APPLICANT'S RELATIONSHIP TO INVENTOR

In accordance with M.P.E.P. § 409.03(b), applicant Mark G. Lappin is a registered patent attorney (Registration No. 26,618) in the Intellectual Property Department of McDermott Will & Emery LLP, acting on behalf of Carl Zeiss AG, who acquired the Application from Photoelectron. Photoelectron is the original assignee of Mark Dinsmore's interest in the patent Application.

D. INVENTOR REFUSED TO SIGN THE APPLICATION PAPERS

In accordance with M.P.E.P. §409.03(d), 1) Mark Dinsmore refused to sign the Application Papers, despite having been asked to do so; and 2) Mark Dinsmore gave a reason for refusing to sign the Application Papers, namely that he was concerned that signing the Application Papers might limit his future business activities.

E. PROOF OF REFUSAL TO EXECUTE THE APPLICATION PAPERS

In accordance with M.P.E.P. §409.03(d), Mark G. Lappin submits herewith a "Revised Declaration in Support of a Petition Under 37 C.F.R. § 1.47(b)," which fully describes the facts that are relied upon to establish that Mark Dinsmore refused to sign the Application Papers.

F. LAST KNOWN ADDRESS

In accordance with M.P.E.P. §409.03(e), the last known address of Mark Dinsmore is: 25 Wadsworth Road, Sudbury, MA 01776.

G. THE INVENTOR HAS ASSIGNED THE INVENTION TO CARL ZEISS AG

In accordance with M.P.E.P. §409.03(f), the inventor Mark Dinsmore assigned the Patent Application to Photoelectron, which in turn assigned the Application to Carl Zeiss AG. A copy of the relevant assignment documents ("Assignment Documents") are attached to this petition. The Assignment Documents establish a prima facie case that Carl Zeiss AG has a proprietary interest in the subject matter of the Application.

H. FILING OF THE APPLICATION IS NECESSARY TO PRESERVE THE RIGHTS OF CARL ZEISS AG

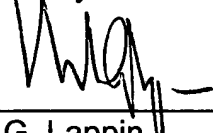
In accordance with M.P.E.P. §409.03(g), the refusal by Mark Dinsmore to sign the Application Papers fails to preserve Carl Zeiss AG's rights granted under the Assignment Documents, and will result in irreparable damage by causing the abandonment of the Application for failure to comply with the statutory requirements of 37 C.F.R. §1.497. The filing of the Application is necessary to preserve the rights of Carl Zeiss AG.

I. PETITION FEE

The Commissioner is hereby authorized to charge the petition fee in accordance with 37 C.F.R. 1.117(i), as well as the petition fee (if deemed necessary) for an extension of time under 37 C.F.R. § 1.136, to Deposit Account 50-1133. The Commissioner is hereby authorized to charge any additional fees that may be due, or credit any overpayment of same, to Deposit Account No. 50-1133.

Date: 5/20/05

Respectfully submitted,



Mark G. Lappin
Registration Number 26,618
McDERMOTT WILL & EMERY LLP
28 State Street
Boston, Massachusetts 02109
Customer No.: 23630
Tel.: (617) 535-4043
Fax: (617) 535-3800



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Mark Dinsmore

Serial No.: 10/790,635 (which is a reissue application of
6,480,568 issued November 12, 2002)

Filed: March 01, 2004

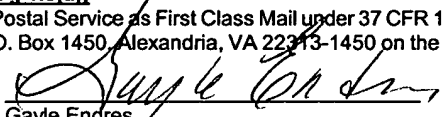
Title: OPTICALLY DRIVEN THERAPEUTIC RADIATION SOURCE

Attorney Ref.: 56249-172 (PHLL-155RE)

CERTIFICATE OF MAILING (37 C.F.R. § 1.8(a))

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail under 37 CFR 1.8(a) in an envelope addressed to Office of Petitions, the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

Date: 5/20/05


Gayle Endres

Office of Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REVISED DECLARATION OF MARK G. LAPPIN FILED
IN SUPPORT OF PETITION UNDER 37 C.F.R. § 1.47(b)**

I, Mark G. Lappin, to the best of my knowledge and belief, do hereby state as follows:

1. I am a registered patent attorney (Registration No. 26,618) in the Intellectual Property Department of McDermott Will & Emery LLP, acting on behalf of Carl Zeiss AG, who is the current assignee of the above-referenced reissue application ("Reissue Application").
2. Mark Dinsmore is the sole inventor of the Reissue Application.
3. Mark Dinsmore is the sole inventor of U.S. Patent No. 6,480,568B2 ("Underlying Patent"), upon which the Reissue Application is based.
4. I filed and prosecuted the application that issued in due course as the Underlying Patent ("Underlying Application").

5. Because Mark Dinsmore is the sole inventor of the Underlying Patent, has reviewed the contents of the Underlying Application, and has signed the application papers for the Underlying Application, Mark Dinsmore is thoroughly familiar with the subject matter disclosed in the Reissue Application.

6. On or about November 8, 2004, I met with Mark Dinsmore and spoke to him about the Reissue Application, explaining to him the proposed changes to the claims of the Reissue Application, as compared to the claims of the Underlying Patent.

7. At the aforesaid November 8, 2004 meeting, I presented the entire Reissue Application, including the specification, claims, drawings and Declaration, to Mark Dinsmore, and solicited his review of the Reissue Application and, if all was in order, his signature of the Declaration.

8. At the aforesaid November 8, 2004 meeting, Mark Dinsmore stated to me that he would not sign the Declaration, thereby effecting an oral refusal to sign the Declaration for the Reissue Application. Mark Dinsmore's oral refusal to sign occurred on November 8, 2004, in Massachusetts.

9. At the aforesaid November 8, 2004 meeting, Mark Dinsmore stated a reason for his refusal, namely that he was concerned that signing the Declaration for the Reissue Application would limit his future business activities.

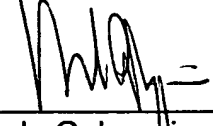
10. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under

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Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of any application or patent issued thereon.

Date: 5/20/05

Respectfully submitted,
McDermott Will & Emery LLP
Customer No. 23630



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